

**REMARKS**

Favorable reconsideration is respectfully requested in view of the foregoing amendments and the following remarks.

**I. Claim Status and Amendments**

Claims 1-20 were pending in this application when last examined.

Claims 1-2, 4, 8-9, 13-16, and 18-20 are currently amended. Support for the amendments can be found in the specification and original claims as filed.

Claims 21-24 are added. Support can be found on page 14, lines 2-5 and page 19, lines 18-25 of the specification.

Claims 1-24 are pending upon entry of this amendment.

No new matter has been added by the above claim amendments.

**II. Indefiniteness Rejection**

Claims 1-20 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for the reasons on pages 2-3 of the Office Action.

Claims 1-2, 4, 8-9, 13-16, and 18-20 are amended herewith to improve the clarity of the claim language that was objected to.

As to claims 1 and 2, in item 6 of the Office Action asserts that the phrase "lower than the destruction temperature of the flora present in the fresh fermented milk"

is indefinite, because fermented milks may comprise various cultures with different thermal death requirements.

Applicant respectfully disagrees and submits that for a given flora-containing fresh milk product the temperature at which such flora will be destroyed is reasonably clear. For example, the present specification provides an example on page 14, lines 2-5:

This temperature is, for example, preferably less than or equal to 50°C, for the yoghurt ferments *Lactobacillus bulgaricus* and *Streptococcus thermophilus*.

Further, one of ordinary skill in the art would readily know or could readily determine the destruction temperature of the flora for a given fresh fermented product. This is supported by page 8, lines 3-5 of Bodor et al. (EP 0 535 728) which is cited on page 6 of the Office Action, which discloses:

the temperature at which various bacteria are rendered inactive varies. However, generally, the upper temperature limit is at about 65°C, preferably at about 55°C.

Thus, it is believed that the destruction temperature of the flora present in s fresh fermented milk is reasonably definite.

As to claims 9 and 13, in item 9 of the Office Action asserts that the word "boiler-mixer" is not clear.

Applicant respectfully submits that the "boiler-mixer" is a usual apparatus in the field of food industry as described in an excerpt of the website of the firm Karl Schnell, which is a machinery construction company (enclosed herewith).

Thus, it is believed that the term "boiler-mixer" is also suitably definite.

### **III. Prior Art Rejections**

Claims 1-20 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Brenton et al. (EP 0 815 737) in view of Karrazi (U.S. 4,719,113) for the reasons on pages 3-6 of the Office Action.

Claims 1-20 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Brenton et al. (EP 0 815 737) in view of Bodor et al. (EP 0 535 728) for the reasons on pages 6-8 of the Office Action.

These rejections are respectfully traversed, and will be discussed together below.

The Office Action asserts that Brenton discloses a natural cheese mixture which is heated in a jacketed mixer to about 72°C to 81°C and held at that temperature for about 1-3 minutes.

Brenton thus fails to teach heating the cheese mass to a temperature of between 60°C and 70°C, as required by the present claims. The higher temperatures of Brenton cause melting of the natural cheese which removes the structure of the initial texture of the natural cheese. Thus, where the natural cheese was a drawn-curd, the fibrous texture of the drawn-curd is no longer in the final product. See, for instance, page 4, lines 5-9 and page 9, lines 21-25 where the present specification teaches:

at temperatures of greater than 70°C, the original structural state (fibrous texture) of the drawn curds is destroyed by the thermal processing operation, and the thermal processing tends to produce cheese products of the spreading cheese type

Because Brenton does not disclose this aspect of the claimed method, the suggested modification of Brenton in view of Karrazi to provide a different aspect of the claimed method would not overcome this shortcoming of Brenton for reference purposes relative to the pending claims.

Karrazi is relied upon for a process where the base ingredients are mixed and heated to about 82°C, then cooled to about 37°C whereupon yogurt is mixed with the cooled base. The Office Action posits that, given the yogurt is added to the cooled base mixture, the process will have certain advantages, namely, protection of the live culture in the added yogurt, prevention of curdling of yogurt at high temperature and low

pH, and protection of the flavor imparted by yogurt to the finished product.

However, no recognition of any such advantages is to be found in Karrazi. Rather, Karrazi teaches that the interest in incorporating yogurt into the cheese-type product is to decrease calorie intake, reduce fat and cholesterol content of the diet. See, for instance, col. 2, lines 35-40.

Thus, it is believed to be apparent that a skilled artisan would not have been led by Karrazi to cool the base of Brenton before mixing in the yogurt in order to protect the live culture in the yogurt, since there is no such teaching in Karrazi. Moreover, even if such a combination were made it would not result in the claimed method in view of the failure of Brenton to disclose the claimed temperature range for the preceding heating of the cheese, as discussed above.

Bodor was relied upon for its disclosure of a heating range of 35-65°C; however, the material heated in Bodor is a blend of unripened cheese and a paste comprising particles of a protein source. The temperature range is selected so as to plasticize the blend below pasteurization temperatures. Page 4, lines 26-29 of Bodor makes clear that the temperature range is selected to permit bacterial cultures in the unripened cheese to survive the process.

Thus, nothing in Bodor would have made it obvious to heat the Brenton mixture at 60-70°C rather than at 72.8°C to

82.1°C before cooling the cheese mass and blending in the flora-containing fresh fermented milk product.

Consequently, the present claims are believed to be unobvious in view of the combined disclosures of Brenton and Karrazi, as well as Brenton and Bordor.

Charge the fee of \$208 for the four claims of any type added herewith, to our credit card.

### **III. Conclusion**

In view of the foregoing amendments and remarks, it is respectfully submitted that the present application is in condition for allowance and early notice to that effect is hereby requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,  
YOUNG & THOMPSON

/Andrew J. Patch/  
Andrew J. Patch, Reg. No. 32,925  
209 Madison Street, Suite 500  
Alexandria, VA 22314  
Telephone (703) 521-2297  
Telefax (703) 685-0573  
(703) 979-4709

AJP/ml

**APPENDIX:**

The Appendix includes the following item:

- Excerpt of website Karl Schnell